

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**DOCKET NO. 3:97-cr-00040-FDW-2**

**JUAN BAUTISTA ALMOIA-TORRES,** )

**Petitioner,** )

**vs.** )

**UNITED STATES OF AMERICA,** )

**Respondent.** )

**ORDER**

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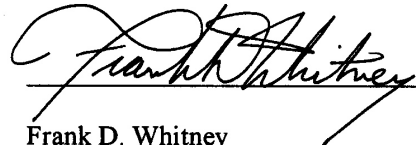
THIS MATTER comes now before the Court upon Petitioner's "Request for Excusable Neglect and/or Extraordinary Circumstances" (Doc. No. 508). Petitioner's Motion is hereby GRANTED.

On January 17, 2006, Petitioner filed a Motion pursuant to Rule 60(b) (Doc. No. 486), which this Court, on April 20, 2006, construed as a successive § 2255 motion and therefore dismissed (Doc. No. 491). Petitioner, however, alleges that he did not receive a copy of this Court's Order until October 5, 2007, and therefore was unable to file a timely notice of appeal. This allegation is supported by a docket entry, dated September 19, 2007, indicating that Petitioner telephoned Court staff to protest the fact that he never received a copy of the April 20 Order. In light of these circumstances, the Court will grant Petitioner's Motion and will allow him sixty (60) days from the date of this Order, **on or before January 23, 2009**, to file an appeal of this Court's April 20 Order. The Court notes, however, that in no way shall this extension to file an appeal be construed as a certificate of appealability to file a successive 2255 (which only the Fourth Circuit may issue). Rather, the Court recognizes that due to circumstances outside of Petitioner's control, he was unable

to appeal this Court's Order construing his 60(b) motion as a successive 2255. Petitioner's Motion is therefore GRANTED.

IT IS SO ORDERED.

Signed: November 24, 2008

  
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Frank D. Whitney  
United States District Judge

